IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C.W.P.No.457 of 1995
Date of Decision : September 29, 2006.

Prem Singh Gill and others ..... Petitioners

Vs.

State of Punjab ..... Respondent

Coram : Hon'ble Mr.Justice P.S.Patwalia

* * *

Present : Mr.C.L.Sharma, Advocate
for the petitioners.

Mr.G.C.Gupta, DAG, Punjab
for the respondent.

* * *

P.S.Patwalia, J. :

Petitioners were working as Joint Directors in the Department of Agriculture, Punjab and were drawing their pay in the scale of Rs.3000-4500. They were promoted as Additional Directors Agriculture (Administrative Wing) vide order dated 21.2.1992 and granted pay scale of Rs.3700-5300.

The State of Punjab passed an order dated 18.9.1992 revising the pay scales of various posts in the Department of

Agriculture/Horticulture. The said order attached as Annexure P-2 with this writ petition reads as hereunder :-

"Memo No.16/3/89-Agri.1(1)/13376 dated Chandigarh the 18.9.92

Subject : Revision of Pay Scales of posts of the Department of Agriculture/Horticulture.

The Government of Punjab is pleased to accord sanction for the revision of the pay scales of the officers of Deptt. of Agriculture/Horticulture with effect from 1.1.91 as under :-

S.No.	***Category/Cadre***	***Present Pay Scale***	***Revised Pay Scale***	***Remarks***
1.	*Agriculture/ Horticulture*	*Rs.2200-3500*	*Rs.2200-4000*	*....*
2.	*Agriculture Officer*	*Rs.2100-3700*	*Rs.3000-4500*	*After 8 yrs. of service*
3.	*Officers falling in*	*....*		
4.	*Joint Directors Addl.Directors*	*Rs.3000-4500 Rs.3700-5300*	*Rs.4125-5600*	*Two cadres are merged and redesignated as Joint Directors. The present incumbents on the posts of Addl. Directors may retain their designation as personal to them.*
xx	*xx*	*xx*	*xx*	*xx*	*xx*

Sd/- Additional Secretary to Govt.Pb.
Deptt. of Agriculture."

A perusal of the order would show that the cadres of Joint Directors and Additional Directors were merged. However the incumbents holding the posts of Additional Directors were to retain their designations as personal to them. Consequent upon merger both the posts of Joint Directors and Additional Directors were granted revised pay scale of Rs.4125-5600. A reading of the order would further show that this revised pay scale was granted with effect from 1.1.1991. The petitioners were also granted the revised pay scale of Rs.4125-5600 with effect from 1.1.1991.

The petitioners submitted a representation against this revision of their pay scales wherein they raised a two fold grievance. Firstly it was stated by them that the pay scales of all the categories of Agriculture technocrats have been revised with effect from 1.1.1986 . On the other hand, the petitioners had been given the revised pay scales with effect from 1.1.1991. It was therefore prayed that this discrimination should be removed and the petitioners should also be given the revised pay scale with effect from 1.1.1986. Secondly the petitioners contended that the pay scale of the post of Additional Director was down graded and merged with that of Joint Director. They claimed that since prior to the present revision of pay scales, the pay scale of the post of Additional Director was higher than that of Joint Director, even after the pay revision, the pay scale given to the Additional Directors should have been higher than that of the Joint Directors. When no action was taken on their representation, the petitioners filed the present writ petition for the aforementioned relief.

The petitioners have attached with this writ petition copy of an order dated 19.8.1992 as Annexure P-3 whereby the pay scale of Joint Director Agriculture (Engineering), Joint Director Agriculture (Bio Gas) and Joint Director (Hydrogeology) was revised from Rs.4125-5600 to Rs.4500-6100. This pay scale was revised with effect from 1.1.1986. The petitioners have further relied upon a notification dated 20.1.1989 which shows that in the Department of Health, one post of Joint Director was upgraded to the post of Additional Director and granted the pay scale of Rs.4500-6100. The petitioners therefore pray that they should also be granted the pay scale of Rs.4500-6100. They further pray that in any case the revised pay scale should be granted to them with effect from 1.1.1986 the date it has been granted to all other employees in the State of Punjab.

A reply has been filed on behalf of the respondent. It has been stated therein that by an order dated 18.9.1992, the Government decided to merge the cadres of Joint Director/Additional Director (Agriculture) in the Administrative Wing and re-designated them as Joint Directors. However the persons already working as Additional Directors i.e. the petitioners were allowed to retain their designation as personal to them. It is denied that their posts were down graded. It is stated that as a result of revision of the pay scales, the Government decided to grant the pay scale of Rs.4125-5600 to the merged posts of Joint Directors/Additional Directors. It is further stated that a decision was taken to grant the said pay scale with effect from 1.1.1991. The respondent has therefore prayed that there is no merit in the petition and the same is liable to be dismissed.

In so far as the claim of the petitioners for the grant of revised pay scale with effect from 1.1.1986 is concerned I find that the same is

completely covered by the decision rendered in *Swaran Singh and others vs. State of Punjab and others, Civil Writ Petition No.1283 of 1996,* decided by a Division Bench of this Court on 7.1.1999. The controversy in that case was also arising out of the fact that the petitioners therein had been given revised pay scales with effect from 1.1.1994 rather than 1.1.1986. They had prayed that since the benefit of revised pay scales to other categories in the State of Punjab had been given from 1.1.1986, the State could not arbitrarily fix a later date for grant of revised pay scales to the petitioners in those writ petitions. This Court after considering a large number of judgments of the Hon'ble Supreme Court has held as hereunder :-

> *"The cases of the petitioners may now be examined in the light of the principles laid down by the Apex Court and by this Court. Admittedly, revised pay scales have been granted to different categories of employees on the recommendations of the Pay Commission which were implemented with effect from 1.1.1986. The benefit of further revision of pay scale has also been given to the Clerks, Senior Clerks, Senior Assistants, Senior Architects of Public Works Department, Supervisors of the Printing and Stationery Department and others w.e.f. 1.1.1986. However, in the case of the petitioners, the benefit of revised pay scale has been extended only w.e.f. 1.1.1994. The respondents have tried to justify the fixation of cut-off date as 1.1.1994 for the grant of revised*

pay scales to the petitioners by contending that the government possesses absolute and unbridled power to fix different cut off dates for grant of benefit of the revised pay scales to the employees of different categories. It has then taken the shelter of the so-called policy decision taken by it not to give the benefit of enhanced revised pay scales to the employees from the date earlier than 1.1.1994. In support of their assertion that the denial of enhanced revised pay scales to the petitioners w.e.f. 1.1.1986 is supported by a policy decision of the government, respondents have produced office notings but after carefully going through the notings placed before the Court, we are of the opinion that these notings cannot be treated as a conscious policy decision taken by the government on some rational basis to fix 1.1.1994 as the date of giving the benefit of enhanced revised pay scales to the employees on the recommendations of anomaly committee. Moreover, the grant of revised pay scales to Senior Architects and others w.e.f. 1.1.1986 is a complete antithesis of the plea of policy decision but forward by the respondents. That apart, the respondents have not placed any material on record to show that the benefit of enhanced

revised pay scales has been given to the petitioners w.e.f. 1.1.1994 keeping in view their educational and other qualifications, nature of duties, degree of responsibility, quality and quantity of their work etc. vis-a-vis the employees belonging to other cadres who have been given higher revised pay scale w.e.f. 1.1.1986. Thus, we are unable to agree with the respondents that the denial of enhanced revised pay scales to the petitioners is based on a rational policy decision.

The doctrine of classification, which is recognised as an exception to the doctrine of equality does empower the government and public authority to classify the similarly situated persons and things into different groups for the purpose of subjecting them to different treatment. However, the burden to prove that the persons and goods belonging to one category have been rationally classified into two or more than two groups and such classification bears rational relation with the object sought to be achieved is always on the public authority. In the case in hand the respondents have failed to prove that fixation of different dates for grant of revised pay scales has any rational relation with their decision to remove anomaly in the pay scales of the employees who

were earlier put in the identical time scale. Therefore, we are constrained to hold that the impugned notification does not satisfy the test of valid classification.

For the reasons mentioned above, the writ petitions are allowed, the date 1.1.1994 specified in the notification dated 6.6.1994 is declared unconstitutional and the respondents are directed to amend the impugned notification so as to make the revision of pay scale effective from 1.1.1986. The petitioners shall get all consequential benefits.

Sd/-
(G.S.Singhvi)
Judge

Sd/-
(M.L.Singhal)
January 7, 1999 *Judge"*

The same view has been taken by another Division Bench of this Court in *Joginder Singh Saini and others vs. State of Punjab and others* reported as *1998 (4) RSJ 585.* The relevant observations of the Court are as hereunder :-

"3. At the hearing of the case, learned counsel for the petitioners invited our attention to the order dated 25.8.1998 passed the Supreme

Court in Civil Appeal No.10549 of 1996 State of Punjab and another vs. Dr. Dharam Paul and others and urged that in view of the dismissal of appeal filed by the State of Punjab against the judgment of the High Court, the petitioners should be given the benefit of revised pay scale w.e.f. 1.1.1986. The learned Deputy Advocate General frankly and fairly conceded that the case of the petitioners is similar to that of Dr.Dharam Paul and others.

4. In our opinion, the petitioners deserve to be granted relief in terms of the order passed by the Supreme Court in Dr. Dharam Paul's case (supra). Therefore, without making an elaborate analysis of the fact and the question of law raised in the writ petition, we allow the writ petition and direct that in terms of the judgment of the Supreme Court in Civil Appeal No.10549 of 1996, the petitioners should be given the benefit of revised pay scale of Rs.1640-2925 w.e.f. 1.1.1986. The petitioners shall be paid arrears within 6 months."

Still further a reading of the order attached as Annexure P-3 to this writ petition would show that in the Department of Agriculture even the pay scale of the post of Joint Director Agriculture (Engineering), Joint Director Agriculture (Bio Gas) and Joint Director (Hydrogeology) was revised and this revision was made effective with effect from 1.1.1986. Still

further in the written statement absolutely no justification has been given as to why the benefit of revised pay scale has been given to the petitioners from 1.1.1991 when all other employees in the State have been given the aforesaid benefit with effect from 1.1.1986. Following the law laid down in the aforementioned two judgments and in view of the fact that in the Department of Agriculture itself and other Departments, the benefit of pay scale was given to the employees with effect from 1.1.1986, the petitioners are also held entitled of the benefit of revision of their pay scales with effect from 1.1.1986. As a result of the findings recorded herein above the petitioners are held entitled to revised pay scale of Rs.4125-5600 with effect from 1.1.1986. They shall also be entitled to all consequential benefits on account of revision of the pay scale with effect from 1.1.1986.

The petitioners next contend that the effect of order dated 18.9.1992 is that their status has been down graded to that of Joint Director. They submit that they should be kept above the post of Joint Directors and give a higher pay scale of Rs.4500-6100. A reading of the order dated 18.9.1992 would show that cadre of Joint Directors have been merged. As a result of merger a common pay scale has been granted to the two posts. However the incumbent who were holding the posts of Additional Directors on the date of passing of the said order have been allowed to retain the designation of Additional Director as personal to them. There is no challenge to the order dated 18.9.1992 in this writ petition. Moreover on reading the order I find that the interest of the petitioners has been protected as their designation as Additional Directors has been retained as a measure personal to them. I find that the pay scale of the petitioners has not been reduced, rather on revision of pay scales, a pay scale of Rs.4125-

5600 has been granted to the petitioners in place of their earlier pay scale of Rs.3700-5300. Thus factually the petitioners retain the status of the post of Additional Director which had not been reduced. There is no specific challenge to the order dated 18.9.1992. Therefore I find no merit in this contention of the petitioners.

Before concluding one more aspect of the matter needs to be adverted to. Although the petitioners in this writ petition were claiming that they should be granted the pay scale of Rs.4500-6100 as Additional Directors as according to them their pay scale should have been higher than the pay scale for the post of Joint Director yet on going through Annexure P-3, I found that in the Department of Agriculture from where the petitioners had retired even posts of Joint Directors being Joint Director Agriculture (Engineering), Joint Director Agriculture (Bio Gas) and Joint Director (Hydrogeology) had been granted the pay scale of Rs.4500-6100 after a further revision in August 1992. This pay scale was granted with effect from 1.1.1986. Even though no specific claim had been made in the writ petition that even assuming that the petitioners were to be considered as Joint Directors still they should be granted the pay scale of Rs.4500-6100, to satisfy myself I had asked learned counsel for the State to produce the record leading to the passing of the order Annexure P-3. It may be mentioned herein that posts of Joint Directors whether in the Administration, Statistical or Engineering wings, are governed by the Punjab Agriculture Services (Class-I) Rules 1974. When the record was produced it transpired that a recommendation for the scale of Rs.4125-5600 was made for Joint Directors Agriculture (Engineering) also. Therefore they were also in the first instance granted the aforementioned scale.

However learned Deputy Advocate General, Punjab on instructions from Shri Jagmohan Singh, Senior Assistant from the office of the respondent informed me that these Joint Directors Agriculture (Engineering) had made a representation for the grant of higher pay scale of Rs.4500-6100. On this representation the Administrative Department had made a favourable recommendation which was accepted by the Finance Department and therefore the posts of Joint Directors in that wing were granted the pay scale of Rs.4500-6100. Since the petitioners have not laid any factual basis claiming parity in the posts of Joint Directors in the different wings of Department of Agriculture the State Government had no opportunity to respond to the same. Therefore I am of the opinion that the interest of justice would require that the petitioners are given liberty to file a representation for the grant of pay scale of Rs.4500-6100 on the basis of parity amongst all posts of Joint Directors in the Department of Agriculture. In case such a representation is made within a period of four weeks from today the same shall be decided by the State Government by passing a reasoned speaking order within a period of three months thereafter.

For the reasons aforementioned the present writ petition is allowed and order Annexure P-2 is modified. The scale of Rs.4125-5600 shall be granted to the petitioners with effect from 1.1.1986 with all consequential benefits. The arrears payable to the petitioners on this score would be calculated and released to them within a period of three months from the date of receipt of a certified copy of this judgment. The petitioners would also be at liberty to file a representation for the grant of pay scale of Rs.4500-6100 as mentioned herein above within a period of four weeks and in case any such representation is filed the same shall be decided within a

period of three months thereafter.

In the circumstances of the case however there shall be no order as to costs.

September 29, 2006 (P.S.Patwalia)
monika Judge